



General Assembly

January Session, 2005

Raised Bill No. 6889

LCO No. 4335

04335_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING THE ELECTIVE SHARE OF A SURVIVING SPOUSE OF A DECEDENT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2005*) (a) The surviving spouse
2 of a decedent who dies domiciled in this state on or after the effective
3 date of this section has a right of election, under the limitations and
4 conditions stated in sections 1 to 8, inclusive, of this act, to take an
5 elective share amount not greater than one-half of the value of the
6 augmented estate, determined by the length of time the spouse and the
7 decedent were married to each other, in accordance with the following
8 schedule:

T1 If the decedent and the spouse The elective share percentage is:
 were married to each other:

T2

T3 Less than 1 year Supplemental amount only

T4 1 year but less than 2 years 5% of the augmented estate

T5 2 years but less than 3 years 10% of the augmented estate

T6 3 years but less than 4 years 15% of the augmented estate

T7	4 years but less than 5 years	20% of the augmented estate
T8	5 years but less than 6 years	25% of the augmented estate
T9	6 years but less than 7 years	30% of the augmented estate
T10	7 years but less than 8 years	35% of the augmented estate
T11	8 years but less than 9 years	40% of the augmented estate
T12	9 years but less than 10 years	45% of the augmented estate
T13	10 years or more	50% of the augmented estate

9 (b) If the sum of the amounts described in subdivision (4) of
 10 subsection (b) of section 2 of this act, subdivision (1) of subsection (a)
 11 of section 3 of this act, and that part of the elective share amount
 12 payable from the decedent's probate estate and nonprobate transfers to
 13 others under subsections (b) and (c) of section 3 of this act is less than
 14 fifty thousand dollars, the surviving spouse is entitled to a
 15 supplemental elective share amount equal to fifty thousand dollars,
 16 minus the sum of the amounts described in said sections. The
 17 supplemental elective share amount is payable from the decedent's
 18 probate estate and from recipients of the decedent's nonprobate
 19 transfers to others in the order of priority set forth in subsections (b)
 20 and (c) of section 3 of this act.

21 (c) If the right of election is exercised by or on behalf of the
 22 surviving spouse, the surviving spouse's exempt property and family
 23 allowance, if any, are not charged against but are in addition to the
 24 elective share and supplemental elective share amounts.

25 (d) The right, if any, of the surviving spouse of a decedent who dies
 26 domiciled outside this state to take an elective share in property in this
 27 state is governed by the law of the decedent's domicile at death.

28 Sec. 2. (NEW) (*Effective October 1, 2005*) (a) As used sections 1 to 8,
 29 inclusive, of this act, unless the context otherwise requires:

30 (1) "Bona fide purchaser" means a purchaser for value in good faith
 31 and without notice of an adverse claim;

32 (2) "Decedent's nonprobate transfers to others" means the decedent's
33 nonprobate transfers to persons, other than the decedent's spouse,
34 surviving spouse, the decedent, or the decedent's creditors, estate or
35 estate creditors, that are included in the augmented estate under
36 subdivision (2) of subsection (b) of this section;

37 (3) "Fractional interest in property held in joint tenancy with the
38 right of survivorship", whether the fractional interest is unilaterally
39 severable or not, means the fraction, the numerator of which is one and
40 the denominator of which, if the decedent was a joint tenant, is one
41 plus the number of joint tenants who survive the decedent and which,
42 if the decedent was not a joint tenant, is the number of joint tenants;

43 (4) "Marriage", as it relates to a transfer by the decedent during
44 marriage, means any marriage of the decedent to the decedent's
45 surviving spouse;

46 (5) "Multiple-party account" means an account payable on request to
47 one or more of two or more parties, whether or not a right of
48 survivorship is mentioned;

49 (6) "Nonadverse party" means a person who does not have a
50 substantial beneficial interest in the trust or other property
51 arrangement that would be adversely affected by the exercise or
52 nonexercise of the power that he or she possesses respecting the trust
53 or other property arrangement. A person having a general power of
54 appointment over property is deemed to have a beneficial interest in
55 the property;

56 (7) "Power" or "power of appointment" includes a power to
57 designate the beneficiary of a beneficiary designation, including
58 beneficiary designations under individual retirement accounts and
59 annuities described in Section 408 of the Internal Revenue Code of
60 1986, or any subsequent corresponding internal revenue code of the
61 United States, as from time to time amended, as well as other pension
62 plans or arrangements not subject to Part 2 of the federal Employee

63 Retirement Income Security Act of 1974, as from time to time
64 amended;

65 (8) "Presently exercisable general power of appointment" means a
66 power of appointment under which, at the time in question, the
67 decedent, whether or not he or she then had the capacity to exercise
68 the power, held a power to create a present or future interest in himself
69 or herself, his or her creditors, his or her estate, or the creditors of his
70 or her estate, and includes a power to revoke or invade the principal of
71 a trust or other property arrangement;

72 (9) "Probate estate" means property, whether real or personal,
73 movable or immovable, wherever situated, that would pass by
74 intestate succession if the decedent died without a valid will;

75 (10) "Transfer", as it relates to a transfer by, or on behalf of, the
76 decedent, includes: (A) An exercise or release of a presently exercisable
77 general power of appointment held by the decedent; (B) a lapse at
78 death of a presently exercisable general power of appointment held by
79 the decedent; and (C) an exercise, release or lapse of a presently
80 exercisable general power of appointment that the decedent created in
81 himself or herself and of a power described in subparagraph (B)(ii) of
82 subdivision (2) of subsection (b) of this section that the decedent
83 conferred on a nonadverse party; and

84 (11) "Value", unless otherwise indicated in this section, means fair
85 market value as of the decedent's date of death.

86 (b) The augmented estate consists of the sum of:

87 (1) The value of the decedent's probate estate, reduced by funeral
88 and administrative expenses, family allowance, exempt property and
89 enforceable claims;

90 (2) The value of the decedent's nonprobate transfers to others, which
91 are composed of all property, whether real or personal, movable or
92 immovable, wherever situated, not included in the decedent's probate

93 estate, of any of the following types:

94 (A) Property of any of the following types that passed outside
95 probate at the decedent's death:

96 (i) Property over which the decedent alone, immediately before
97 death, held or retained a presently exercisable general power of
98 appointment; the amount included is the value of the property subject
99 to the power, to the extent that the property passed at the decedent's
100 death, by exercise, release, lapse, in default or otherwise, to or for the
101 benefit of any person other than the decedent's estate or surviving
102 spouse, except that property over which the decedent had only a
103 testamentary power of appointment is not included. Property over
104 which the decedent had a general inter vivos power of appointment or
105 withdrawal created in the decedent by a third party is includable
106 unless the governing instrument contains a provision for its
107 termination or lapse, in full or in part, during the life of the decedent.
108 For the purposes of this clause, "termination", with respect to a power
109 described in this clause, means that the power terminated by exercise
110 or release, but not by lapse or in default or otherwise;

111 (ii) The decedent's fractional interest in property held by the
112 decedent in joint tenancy with the right of survivorship; the amount
113 included is the value of the decedent's fractional interest, to the extent
114 that the fractional interest passed by right of survivorship at the
115 decedent's death to a surviving joint tenant other than the decedent's
116 surviving spouse;

117 (iii) The decedent's ownership interest in multiple-party accounts
118 and property or accounts held in POD or TOD, as provided in section
119 45a-468e of the general statutes, or coownership registration with the
120 right of survivorship; the amount included is the value of the
121 decedent's ownership interest, to the extent that the decedent's
122 ownership interest passed at the decedent's death to or for the benefit
123 of any person other than the decedent's estate or surviving spouse; or

124 (iv) Except as provided in subdivision (2) of subsection (c) of this
125 section, proceeds of insurance, including accidental death benefits, on
126 the life of the decedent, if the decedent owned the insurance policy
127 immediately before death or if and to the extent that the decedent
128 alone and immediately before death held a presently exercisable
129 general power of appointment over the policy or its proceeds; the
130 amount included is the value of the proceeds, to the extent that they
131 were payable at the decedent's death to or for the benefit of the
132 decedent's estate or surviving spouse;

133 (B) Property transferred in any of the following forms by the
134 decedent during marriage:

135 (i) Any irrevocable transfer in which the decedent retained the right
136 to the possession or enjoyment of, or to the income from, the property
137 if and to the extent that the decedent's right terminated at or continued
138 beyond the decedent's death; the amount included is the value of the
139 fraction of the property to which the decedent's right related, to the
140 extent that the fraction of the property passed outside probate to or for
141 the benefit of any person other than the decedent's estate or surviving
142 spouse; or

143 (ii) Any transfer in which the decedent created a power over the
144 income or principal of the transferred property, exercisable by the
145 decedent alone or in conjunction with any other person, or exercisable
146 by a nonadverse party, for the benefit of the decedent, the decedent's
147 creditors, the decedent's estate or the creditors of the decedent's estate;
148 the amount included is the value of the property subject to the power,
149 to the extent that the power was exercisable at the decedent's death to
150 or for the benefit of any person other than the decedent's surviving
151 spouse or to the extent that the property subject to the power passed at
152 the decedent's death, by exercise, release, lapse, in default or
153 otherwise, to or for the benefit of any person other than the decedent's
154 estate or surviving spouse; and

155 (C) Property transferred during marriage and during the two-year

156 period next preceding the decedent's death as a result of a transfer by
157 the decedent if the transfer was of any of the following types:

158 (i) Any property that passed as a result of the termination of a right
159 or interest in, or power over, property that would have been included
160 in the augmented estate under subparagraph (A)(i), (ii) or (iii) of this
161 subdivision, or under subparagraph (B) of this subdivision, if the right,
162 interest or power had not terminated until the decedent's death; the
163 amount included is the value of the property that would have been
164 included under subparagraph (A)(i), (ii) or (iii) or subparagraph (B) of
165 this subdivision, except that the property is valued at the time that the
166 right, interest or power terminated, and is included only to the extent
167 that the property passed upon termination to or for the benefit of any
168 person other than the decedent or the decedent's estate, spouse or
169 surviving spouse. For the purposes of this clause, "termination", with
170 respect to a right or interest in property, means that the right or
171 interest terminated by the terms of the governing instrument or that
172 the decedent transferred or relinquished the right or interest, and, with
173 respect to a power over property, means that the power terminated by
174 exercise, release, lapse, in default or otherwise;

175 (ii) Any transfer of, or relating to, an insurance policy on the life of
176 the decedent if the proceeds would have been included in the
177 augmented estate under subparagraph (A)(iv) of this subdivision had
178 the transfer not occurred; the amount included is the value of the
179 insurance proceeds to the extent that the proceeds were payable at the
180 decedent's death to or for the benefit of the decedent's estate or
181 surviving spouse; or

182 (iii) Any transfer of property, to the extent not otherwise included in
183 the augmented estate, made to or for the benefit of a person other than
184 the decedent's surviving spouse; the amount included is the value of
185 the transferred property to the extent that the aggregate transfers to
186 any one donee in either of the two years exceeded ten thousand
187 dollars;

188 (3) The value of the decedent's nonprobate transfers to the
189 decedent's surviving spouse, which are composed of all property that
190 passed outside probate at the decedent's death from the decedent to
191 the surviving spouse by reason of the decedent's death, including (A)
192 the decedent's fractional interest in property held as a joint tenant with
193 the right of survivorship, to the extent that the decedent's fractional
194 interest passed to the surviving spouse as surviving joint tenant, (B)
195 the decedent's ownership interest in multiple-party accounts and
196 property or accounts held in POD or TOD, as provided in section 45a-
197 468e of the general statutes, or coownership registration with the right
198 of survivorship, to the extent the decedent's ownership interest passed
199 to the surviving spouse as surviving coowner, and (C) all other
200 property that would have been included in the augmented estate
201 under subparagraph (A) or (B) of subdivision (2) of this subsection had
202 it passed to or for the benefit of a person other than the decedent's
203 spouse, surviving spouse, the decedent, or the decedent's creditors,
204 estate or estate creditors, but excluding property passing to the
205 surviving spouse under the federal Social Security System; and

206 (4) To the extent not included in or expressly excluded from the
207 augmented estate under subdivision (1) or (2) of this subsection, the
208 value of:

209 (A) Property that was owned by the decedent's surviving spouse at
210 the decedent's death, including:

211 (i) The surviving spouse's fractional interest in property held in joint
212 tenancy with the right of survivorship;

213 (ii) The surviving spouse's ownership interest in multiple-party
214 accounts and property or accounts held in POD or TOD, as provided
215 in section 45a-468e of the general statutes, or coownership registration
216 with the right of survivorship; and

217 (iii) Property that passed to the surviving spouse by reason of the
218 decedent's death; and

219 (B) Property that would have been included in the surviving
220 spouse's nonprobate transfers to others, other than the spouse's
221 fractional and ownership interests included under subparagraph (A)(i)
222 and (ii) of this subdivision, had the spouse been the decedent. Property
223 included under this subdivision is valued at the decedent's death,
224 taking the fact that the decedent predeceased the spouse into account,
225 except that, for the purposes of subparagraph (A)(i) and (ii) of this
226 subdivision, the values of the spouse's fractional and ownership
227 interests are determined immediately before the decedent's death if the
228 decedent was then a joint tenant or a coowner of the property or
229 accounts. For the purposes of this subparagraph, proceeds of insurance
230 that would have been included in the spouse's nonprobate transfers to
231 others under subparagraph (A)(iv) of subdivision (2) of this subsection
232 are not valued as if he or she were deceased. The value of property
233 included under this subdivision is reduced in each category by
234 enforceable claims against the included property and is reduced by
235 enforceable claims against the surviving spouse.

236 (c) Notwithstanding the provisions of subsection (b) of this section,
237 the following exclusions shall control:

238 (1) The value of any property is excluded from the decedent's
239 nonprobate transfers to others (A) to the extent the decedent received
240 adequate and full consideration in money or money's worth for a
241 transfer of the property; (B) if the property was transferred with the
242 written joinder of, or if the transfer was consented to in writing by, the
243 surviving spouse; or (C) if the property was transferred to a bona fide
244 purchaser. For the purposes of this section, in the absence of a finding
245 of a contrary intent, joinder in the filing of a gift tax return does not
246 constitute consent or joinder.

247 (2) Any life insurance maintained pursuant to a marriage
248 dissolution settlement agreement or court order or any distribution
249 from a plan qualified under Section 401(a) of the Internal Revenue
250 Code of 1986, or any subsequent corresponding internal revenue code

251 of the United States, as from time to time amended, is excluded from
252 the decedent's nonprobate transfers to others to the extent such items
253 are payable to a person other than the surviving spouse.

254 (3) Life insurance, accident insurance, pension, profit sharing,
255 retirement and other benefit plans payable to persons other than the
256 decedent's surviving spouse or the decedent's estate are excluded from
257 the augmented estate.

258 (4) Any completed transfers made by the decedent prior to the
259 effective date of this section are excluded from the decedent's
260 nonprobate transfers to others.

261 (5) The decedent's fractional interest in real property held in joint
262 tenancy with the right of survivorship, if such joint tenancy was
263 created by a transfer by the decedent prior to marriage to the surviving
264 spouse, is excluded from the decedent's nonprobate transfers to others.

265 (6) The decedent's fractional interest in real property held in joint
266 tenancy with the right of survivorship, if such joint tenancy was
267 created by a transfer by someone other than the decedent or by
268 someone other than the surviving spouse, is excluded from the
269 decedent's nonprobate transfers to others.

270 (7) The surviving spouse's fractional interest in real property held in
271 joint tenancy with the right of survivorship, if such joint tenancy was
272 created by a transfer by someone other than the decedent or by
273 someone other than the surviving spouse, is excluded from the
274 augmented estate.

275 (8) Except with respect to joint tenancies between the surviving
276 spouse and the decedent, the surviving spouse's fractional interest in
277 real property held in joint tenancy with the right of survivorship, if
278 such joint tenancy was created by a transfer by the surviving spouse
279 prior to marriage to the decedent, is excluded from the augmented
280 estate.

281 (d) The value of property includes the commuted value of any
 282 present or future interest and the commuted value of amounts payable
 283 under any trust, life insurance settlement option, annuity contract,
 284 public or private pension, disability compensation, death benefit or
 285 retirement plan, or any similar arrangement, exclusive of the federal
 286 Social Security System.

287 (e) In case of overlapping application to the same property referred
 288 to in subparagraph (A)(i), (ii) or (iii) or subparagraph (B) of
 289 subdivision (2) of subsection (b) of this section, the property is
 290 included in the augmented estate under the provision yielding the
 291 highest value, but under any one, but only one, of the overlapping
 292 provisions if they all yield the same value.

293 Sec. 3. (NEW) (*Effective October 1, 2005*) (a) In a proceeding for an
 294 elective share, the following are applied first to satisfy the elective
 295 share amount and to reduce or eliminate any contributions due from
 296 the decedent's probate estate and recipients of the decedent's
 297 nonprobate transfers to others:

298 (1) Amounts included in the augmented estate under subdivision (1)
 299 of subsection (b) of section 2 of this act which pass or have passed to
 300 the surviving spouse by testate or intestate succession and amounts
 301 included in the augmented estate under subdivision (3) of subsection
 302 (b) of section 2 of this act. For the purposes of this subdivision, if the
 303 surviving spouse disclaims any property, including interests in trust
 304 created by the decedent, such property shall not be applied under this
 305 subdivision to the extent that such property passes to a person other
 306 than the surviving spouse;

307 (2) Amounts included in the augmented estate under subdivision (4)
 308 of subsection (b) of section 2 of this act up to the applicable percentage
 309 thereof. For the purposes of this subdivision, "applicable percentage"
 310 means twice the elective share percentage set forth in the schedule in
 311 subsection (a) of section 1 of this act appropriate to the length of time
 312 the spouse and the decedent were married to each other.

313 (b) If, after the application of subsection (a) of this section, the
314 elective share amount is not fully satisfied or the surviving spouse is
315 entitled to a supplemental elective share amount, amounts included in
316 the decedent's probate estate and in the decedent's nonprobate
317 transfers to others, other than amounts included under subparagraph
318 (C)(i) or (iii) of subdivision (2) of subsection (b) of section 2 of this act,
319 are applied first to satisfy the unsatisfied balance of the elective share
320 amount or the supplemental elective share amount. The decedent's
321 probate estate and that portion of the decedent's nonprobate transfers
322 to others are so applied that liability for the unsatisfied balance of the
323 elective share amount or for the supplemental elective share amount is
324 equitably apportioned among the recipients of the decedent's probate
325 estate and of that portion of the decedent's nonprobate transfers to
326 others in proportion to the value of their interests therein.

327 (c) If, after the application of subsections (a) and (b) of this section,
328 the elective share or supplemental elective share amount is not fully
329 satisfied, the remaining portion of the decedent's nonprobate transfers
330 to others is so applied that liability for the unsatisfied balance of the
331 elective share or supplemental elective share amount is equitably
332 apportioned among the recipients of that remaining portion of the
333 decedent's nonprobate transfers to others in proportion to the value of
334 their interests therein.

335 Sec. 4. (NEW) (*Effective October 1, 2005*) (a) Only original recipients
336 of the decedent's nonprobate transfers to others, and the donees of the
337 recipients of the decedent's nonprobate transfers to others, to the
338 extent the donees have the property or its proceeds, are liable to make
339 a proportional contribution toward satisfaction of the surviving
340 spouse's elective share or supplemental elective share amount. A
341 person liable to make contribution may choose to give up the
342 proportional part of the decedent's nonprobate transfers to him or her
343 or to pay the value of the amount for which he or she is liable.

344 (b) If any provision of sections 1 to 8, inclusive, of this act is

345 preempted by any federal law, other than the federal Employee
346 Retirement Income Security Act of 1974, as from time to time
347 amended, with respect to a payment, an item of property or any other
348 benefit included in the decedent's nonprobate transfers to others, a
349 person, other than a bona fide purchaser, who receives such payment,
350 item of property or benefit is obligated to return such payment, item of
351 property or benefit, or is personally liable for the amount of such
352 payment or the value of such item of property or benefit, as provided
353 in section 3 of this act, to the person who would have been entitled to it
354 were such provision not preempted.

355 (c) A bona fide purchaser who purchases property from a recipient
356 or who receives a payment or other item of property in partial or full
357 satisfaction of a legally enforceable obligation is neither obligated
358 under sections 1 to 8, inclusive, of this act to return the payment, item
359 of property or benefit nor liable under sections 1 to 8, inclusive, of this
360 act for the amount of the payment or the value of the item of property
361 or benefit.

362 Sec. 5. (NEW) (*Effective October 1, 2005*) (a) Except as provided in
363 subsection (b) of this section, the election shall be made by filing in the
364 probate court having jurisdiction of the decedent's estate, and mailing
365 or delivering to the personal representative, if any, a petition for the
366 elective share within nine months after the date of the decedent's
367 death, or within six months after the decedent's will is admitted to
368 probate, whichever limitation expires later. The surviving spouse shall
369 serve a copy of the petition for the elective share on, and shall give
370 written notice of the time and place set for hearing to, persons
371 interested in the estate and to the distributees and recipients of
372 portions of the augmented estate whose interests may be adversely
373 affected by the taking of the elective share.

374 (b) Within nine months after the decedent's death, the surviving
375 spouse may petition the court for an extension of time for making an
376 election. If, within nine months after the decedent's death, the spouse

377 gives notice of the petition to all persons interested in the decedent's
378 nonprobate transfers to others, the court, for cause shown by the
379 surviving spouse, may extend the time for election.

380 (c) The surviving spouse may withdraw his or her demand for an
381 elective share at any time before entry of a final determination by the
382 court. Written notice of such withdrawal shall be given to persons
383 interested in the estate and the distributees and recipients of portions
384 of the augmented estate whose interests may be adversely affected by
385 the taking of the elective share.

386 (d) After notice and hearing, the court shall determine the elective
387 share and supplemental elective share amounts, and shall order its
388 payment from the assets of the augmented estate or by contribution as
389 appears appropriate under sections 3 and 4 of this act. If it appears that
390 a fund or property included in the augmented estate has not come into
391 the possession of the personal representative, or has been distributed
392 by the personal representative, the court nevertheless shall fix the
393 liability of any person who has any interest in the fund or property or
394 who has possession thereof, whether as trustee or otherwise. The
395 proceeding may be maintained against fewer than all persons against
396 whom relief could be sought, but no person is subject to contribution
397 in any greater amount than he or she would have been under sections
398 3 and 4 of this act had relief been secured against all persons subject to
399 contribution.

400 (e) An order or judgment of the court may be enforced as necessary
401 in suit for contribution or payment in other courts of this state or other
402 jurisdictions.

403 Sec. 6. (NEW) (*Effective October 1, 2005*) (a) The right of election may
404 be exercised only by a surviving spouse who is living when the
405 petition for the elective share is filed in the probate court having
406 jurisdiction of the decedent's estate under subsection (a) of section 5 of
407 this act. If the election is not exercised by the surviving spouse
408 personally, it may be exercised on the surviving spouse's behalf by his

409 or her conservator, guardian or agent under the authority of a power
410 of attorney.

411 (b) If the election is exercised on behalf of a surviving spouse who is
412 an incapacitated person, the court shall set aside that portion of the
413 elective share and supplemental elective share amounts due from the
414 decedent's probate estate and recipients of the decedent's nonprobate
415 transfers to others under subsections (b) and (c) of section 3 of this act
416 and shall appoint a trustee to administer such property for the support
417 of the surviving spouse. For the purposes of this subsection, an
418 election on behalf of a surviving spouse by an agent under a durable
419 power of attorney is presumed to be on behalf of a surviving spouse
420 who is an incapacitated person. The trustee shall administer the trust
421 in accordance with the following terms and such additional terms as
422 the court determines appropriate:

423 (1) Expenditures of income and principal may be made in the
424 manner, when, and to the extent that the trustee determines suitable
425 and proper for the surviving spouse's support, without court order but
426 with regard to other support, income and property of the surviving
427 spouse and benefits of medical or other forms of assistance from any
428 state or federal government or governmental agency for which the
429 surviving spouse must qualify on the basis of need.

430 (2) During the surviving spouse's incapacity, neither the surviving
431 spouse nor anyone acting on behalf of the surviving spouse has a
432 power to terminate the trust; but if the surviving spouse regains
433 capacity, the surviving spouse then acquires the power to terminate
434 the trust, and acquire full ownership of the trust property free of trust,
435 by delivering to the trustee a writing signed by the surviving spouse
436 declaring the termination.

437 (3) Upon the surviving spouse's death, the trustee shall transfer the
438 unexpended trust property in the following order: (A) Under the
439 residuary clause, if any, of the will of the predeceased spouse against
440 whom the elective share was taken, as if such predeceased spouse died

441 immediately after the surviving spouse; or (B) to such predeceased
442 spouse's heirs.

443 Sec. 7. (NEW) (*Effective October 1, 2005*) (a) The rights of election of a
444 surviving spouse and the rights of the surviving spouse to exempt
445 property, family allowance and the decedent's homestead exemption
446 may be waived, wholly or partially, before or after marriage, by a
447 writing signed by the waiving party after fair disclosure. Unless the
448 writing provides to the contrary, a waiver of "all rights upon death", or
449 equivalent language, in the property or estate of a present or
450 prospective spouse is:

451 (1) A waiver of all rights to elective share, exempt property, family
452 allowance and the decedent's homestead exemption by the waiving
453 party in the property of the other;

454 (2) A waiver of the statutory priority of the waiving party to serve
455 as personal representative, executor or administrator of the estate of
456 the other; and

457 (3) A renunciation and disclaimer by the waiving party of all
458 benefits that would otherwise pass to him or her from the other by
459 intestate succession or by virtue of the provisions of any will executed
460 before the writing. Provisions of a will executed before the writing are
461 given effect as if the waiving party:

462 (A) Disclaimed all interests passing to him or her under the will;
463 and

464 (B) Became disqualified to serve as personal representative,
465 executor, administrator or trustee.

466 (b) A surviving spouse's waiver is not enforceable if such waiver
467 would not be enforceable under section 46b-36g of the general statutes.

468 (c) In addition to all other available procedures, a person may
469 revoke all benefits that would otherwise pass upon death by virtue of

470 the provisions of any will executed before the revocation to relatives of
471 such person's spouse, wholly or partially, before or after marriage, by a
472 writing signed by the revoking party. Unless the writing provides to
473 the contrary, a revocation of "all benefits passing upon death to the
474 relatives of my spouse", or equivalent language, is a revocation of all
475 benefits that would otherwise pass upon death to the relatives of the
476 spouse from the revoking party by virtue of the provisions of any will
477 executed before the writing. Provisions of a will executed before the
478 writing are given effect as if the relatives:

479 (1) Disclaimed all interests passing to them under the will; and

480 (2) Became disqualified to serve as personal representative,
481 executor, administrator or trustee.

482 (d) For the purposes of this section, "relative" of an individual's
483 spouse means a person who is related to the spouse by blood, adoption
484 or affinity and who, if the individual and the individual's spouse were
485 divorced, would not be related to the individual by blood, adoption or
486 affinity.

487 (e) The provisions of this section shall apply only to waivers and
488 revocations that are executed on or after the effective date of this
489 section.

490 Sec. 8. (NEW) (*Effective October 1, 2005*) (a) Notwithstanding that,
491 under sections 1 to 8, inclusive, of this act, a payment, item of property
492 or other benefit is included in the decedent's nonprobate transfers to
493 others, a payor or other third party is not liable for having made such
494 payment or transferred such item of property or other benefit to a
495 beneficiary designated in a governing instrument, or for having taken
496 any other action in reliance on the beneficiary's apparent entitlement
497 under the terms of the governing instrument, upon request and
498 satisfactory proof of the decedent's death, before the payor or other
499 third party has received written notice as described in subsection (b) of
500 this section. A payor or other third party is only liable for actions taken

501 two or more business days after the payor or other third party has
502 actual receipt of such written notice. Any form or service of notice
503 other than that described in subsection (b) of this section shall not be
504 sufficient to impose liability on a payor or other third party for actions
505 taken pursuant to the governing instrument.

506 (b) The written notice provided under this section shall indicate the
507 name of the decedent, the name of the surviving spouse, the nature of
508 the payment, item of property or other benefit, and a statement that
509 the surviving spouse intends to file a petition for the elective share or
510 that a petition for the elective share has been filed. The written notice
511 shall be mailed to the payor's or other third party's main office or
512 home by registered or certified mail, return receipt requested, or
513 served upon the payor or other third party in the same manner as a
514 summons in a civil action. Notice to a sales representative of the payor
515 or other third party shall not constitute notice to the payor or other
516 third party.

517 (c) Upon receipt of the written notice described in subsection (b) of
518 this section, a payor or other third party may pay to the probate court
519 having jurisdiction of the decedent's estate any amount owed, or
520 transfer to or deposit with the court any item of property held, by such
521 payor or third party. The availability of such actions under this section
522 shall not prevent the payor or other third party from taking any other
523 action authorized by law or the governing instrument. If no probate
524 proceedings have been commenced, the payor or other third party
525 shall file with the court a copy of the written notice received by the
526 payor or other third party, with the payment of funds or transfer or
527 deposit of property. The court shall not charge a filing fee to the payor
528 or other third party for the payment to the court of amounts owed or
529 for the transfer to or deposit with the court of any item of property,
530 even if no probate proceedings have been commenced before such
531 payment, transfer or deposit. Payment of amounts to the court or
532 transfer to or deposit with the court of any item of property pursuant
533 to this section by the payor or other third party discharges the payor or

534 other third party from all claims under the governing instrument or
535 applicable law for the value of amounts paid to the court or items of
536 property transferred to or deposited with the court.

537 (d) The court shall hold the funds paid or item of property
538 transferred under subsection (c) of this section and, upon its
539 determination under subsection (d) of section 5 of this act, shall order
540 disbursement in accordance with the determination. If no petition is
541 filed in the court within the time specified under subsection (a) of
542 section 5 of this act, or, if filed, the demand for an elective share is
543 withdrawn under subsection (c) of section 5 of this act, the court shall
544 order disbursement to the designated beneficiary in the governing
545 instrument. A filing fee, if any, shall be charged upon disbursement
546 either to the recipient or against the funds or property on deposit with
547 the court, in the discretion of the court.

548 (e) Upon petition to the court by the beneficiary designated in a
549 governing instrument, the court may order that all or part of the
550 property be paid to the beneficiary in an amount and subject to
551 conditions consistent with this section.

552 Sec. 9. Subsection (c) of section 45a-257a of the general statutes is
553 repealed and the following is substituted in lieu thereof (*Effective*
554 *October 1, 2005*):

555 (c) A surviving spouse receiving a share under this section may not
556 elect to take a statutory share under section 45a-436, as amended by
557 this act. The provisions of this section shall apply to estates of persons
558 dying prior to the effective date of this section.

559 Sec. 10. Subsection (h) of section 45a-436 of the general statutes is
560 repealed and the following is substituted in lieu thereof (*Effective*
561 *October 1, 2005*):

562 (h) The provisions of this section shall apply to estates of [all]
563 persons dying on or after July 1, 1985, and prior to the effective date of

564 this section.

565 Sec. 11. Section 46b-36 of the general statutes is repealed and the
566 following is substituted in lieu thereof (*Effective October 1, 2005*):

567 Neither husband nor wife shall acquire by the marriage any right to
568 or interest in any property held by the other before or acquired after
569 such marriage, except as to the share of the survivor in the property as
570 provided [by] in sections 45a-436, as amended by this act, and 45a-437
571 or the elective share of the survivor in the property as provided in
572 sections 1 to 8, inclusive, of this act. The separate earnings of the wife
573 shall be her sole property. She shall have power to make contracts with
574 her husband or with third persons, to convey to her husband or to
575 third persons her real and personal estate and to receive conveyances
576 of real and personal estate from her husband or from third persons as
577 if unmarried. She may bring suit in her own name upon contracts or
578 for torts and she may be sued for a breach of contract or for a tort; and
579 her property, except such as is exempt by law, may be taken on
580 attachment and execution, but shall not be taken for the debts of her
581 husband, except as provided in section 46b-37. The husband shall not
582 be liable for her debts contracted before marriage, [nor] or upon her
583 contracts made after marriage, except as provided in said section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2005</i>	New section
Sec. 2	<i>October 1, 2005</i>	New section
Sec. 3	<i>October 1, 2005</i>	New section
Sec. 4	<i>October 1, 2005</i>	New section
Sec. 5	<i>October 1, 2005</i>	New section
Sec. 6	<i>October 1, 2005</i>	New section
Sec. 7	<i>October 1, 2005</i>	New section
Sec. 8	<i>October 1, 2005</i>	New section
Sec. 9	<i>October 1, 2005</i>	45a-257a(c)
Sec. 10	<i>October 1, 2005</i>	45a-436(h)
Sec. 11	<i>October 1, 2005</i>	46b-36

Statement of Purpose:

To provide for a statutory elective share of a decedent's estate to be taken by the surviving spouse of the decedent.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]